

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**ERIE BP INC,**  
20 N. Erie Blvd  
Hamilton, OH 45011,

**Plaintiff,**

**-VS-**

**UNITED STATES OF AMERICA,  
DEPARTMENT OF AGRICULTURE,  
FOOD AND NUTRITION SERVICE,**  
Regional Administrator  
Midwest Regional Office  
77 West Jackson Blvd, 20th Floor  
Chicago, IL 60604-3507,

**Defendant.**

**Case No.** \_\_\_\_\_

## COMPLAINT

Plaintiff Erie BP Inc (“Erie BP”), by its attorney, brings this complaint for review of a final administrative action, entered by the United States Department of Agriculture, Food and Nutrition Service, stating as follows:

## THE PARTIES

1. Plaintiff Erie BP is an Ohio corporation that operates a gas station and retail food store at 20 N. Erie Blvd, Hamilton, Ohio 45011.

2. Defendant United States of America, Department of Agriculture, Food and Nutrition Service (“FNS”) is an agency of the United States government. FNS administers the Supplement Nutrition Assistance Program (“SNAP”).

## JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 7 U.S.C. § 2023(a)(13), 5 U.S.C. § 702, and 28 U.S.C. § 1331.

4. Venue is proper in the United States District Court for the Southern District of Ohio pursuant to 7 U.S.C. § 2023(a)(13) and 28 U.S.C. § 1402 as it is the venue in which Erie BP engages in business.

### **BACKGROUND**

5. Congress' stated goal for SNAP is to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011.

6. Consumer participants of SNAP must use their benefits "to purchase food from retail food stores that have been approved for participation in the supplemental nutrition assistance program." 7 U.S.C. § 2013(a). FNS may withdraw authorization of a retail food store to participate in SNAP if, among other reasons, it determines that the retail food store "fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of [7 CFR § 278.1]."

7. Criterion A requires that the retail food store offer a variety of staple food items on a continuous basis. 7 CFR § 278.1(b)(1)(ii).

8. Criterion B requires that the retail food store receive "more than 50 percent of [its] total gross retail sales in staple food sales." 7 CFR § 278.1(b)(1)(iii).

### **FACTS**

9. Erie BP serves many low-income residents in and around Hamilton, Ohio.

10. In its retail food store, Erie BP sells many non-food items like toiletries and home cleaning products. However, it primarily sells food products, including baby formula, cereal, milk, canned foods, and soft drinks.

11. Prior to March 2021, Erie BP solely used Eby-Brown Co. ("Eby-Brown"), a

wholesale distributor of food and other products, to supply the products it sold to customers.

12. In March, April, and May, 2021, Eby-Brown experienced supply issues and was unable to fulfill orders for some produce and dairy products.

13. To maintain the variety of foods that it sought to offer, Erie BP supplemented its purchases from Eby-Brown by purchasing produce and dairy products from a local Kroger grocery store.

14. In a letter dated May 21, 2021, the Retailer Operations Division of FNS informed Erie BP that it performed an inspection on April 27, 2021. The Retailer Operation Division requested invoices or receipts to verify that the store carried at least three stocking units of three different varieties of foods in the dairy product's staple food category within ten days of the correspondence.

15. Erie BP did not respond to the request for proof of inventory until June 8, 2021, outside of the ten-day response window.

16. On June 7, 2021, the Retailer Operations Division of FNS withdrew Erie BP's authorization to participate as a retailer in SNAP.

17. One day later, on June 8, 2021, Erie BP submitted to the Retailer Operations Divisions receipts and invoices for inventory.

18. In a letter dated June 15, 2021, Erie BP provided additional receipts and invoices to verify that it continuously carried at least three stocking units of three different varieties of foods in the dairy product's staple food category.

19. Erie BP's documentation reveals that it purchased the following varieties of foods in the dairy product's staple food category:

- a. several varieties of different cow milk products, including regular

whole, 2%, 1%, and chocolate milk, from Kroger grocery store on April 2, 5, 12, 16, and 28, 2021, and from Eby-Brown on April 6, 20, 2021;

b. several varieties of different cheese products from Eby-Brown on March 30, 2021, and pre-prepared products, such as sandwiches or other items, containing cheese on April 6 and 20, 2021; and

c. eggs from Kroger grocery store on April 2 and 28, 2021.

20. At all relevant times, Erie BP carried for sale at least three stocking units of three different varieties of foods in the dairy product's staple food category, specifically, milk, cheese, and eggs.

21. Erie BP met the requirements for SNAP eligibility under Criterion A, as specified in paragraph (b)(1)(i) of 7 CFR § 278.1.

22. On September 30, 2021, FNS issued a Final Agency Decision, attached as Exhibit A, affirming FNS's decision to withdraw Erie BP's authorization to participate as a retailer in SNAP. It found that several receipts provided by Erie BP were ineligible due to the fact that the receipts were outside of the 21-day period before the store inspection on April 27, 2021.

23. The receipts submitted by Erie BP evidenced its purchase of eggs on April 2, 2021. However, Erie BP could not locate and did not produce receipts showing the purchase of eggs between April 6 and 27, 2021. However, despite the lack of a receipt for the purchase of eggs between these dates, eggs were carried for sale on the date of the April 27, 2021 store inspection and at all other relevant times, as reflected by photographs of store inventory taken during the FNS inspection.

24. Withdrawal of Erie BP's authorization to participate as a retailer in SNAP

will have crippling economic consequences to Erie BP because a large segment of its customer base depends on SNAP benefits.

25. Therefore, Erie BP will suffer irreparable injury from its withdrawal of authorization to participate as a retailer in SNAP unless this Court stays FNS' administrative action during the pendency of this review. 7 U.S.C. § 2023(a)(17).

**WHEREFORE**, Plaintiff Erie BP Inc requests that this Court grant the following relief:

A. A de novo trial so that this Court can determine the validity of FNS's final administrative action;

B. An order temporarily staying FNS's final administrative action during the pendency of this action;

C. A judgment and order that FNS's final administrative action is invalid and that reverses that action;

D. An order awarding Erie BP Inc its reasonable attorney's fees; and

E. Any other relief that this Court deems appropriate.

Respectfully submitted,

/s/David S. Blessing

David S. Blessing (#0078509)

*Trial Attorney for Plaintiff*

BLESSING & WALLACE LAW, LLC

119 E. Court St., Ste. 500

Cincinnati, OH 45202

Phone: (513) 621-9191

Fax: (513) 621-7086

E-mail: david@blessingwallacelaw.com